

### **REMARKS/ARGUMENTS**

Applicants have updated the status of the parent application in the specification as suggested by the Examiner. Applicants note that the box 10 on the Office Action Summary of 7/29/03 is marked off but the Office Action does not indicate whether or not the drawings are acceptable; clarification is requested.

Claims 1-33 are pending in the application. Claims 1, 3, 5, 7, 8, 10, 18, 19, 20, 21, 22, 24, 25, 27, 28, 29, 30, 31, and 32 have been amended. Support for the amendments can be found in the specification as well as the original claims. No new matter has been added by way of amendment. Re-examination and reconsideration of the claims as amended are requested.

#### **The Objections to the Claims Should Be Withdrawn**

The Office Action (7/29/03, page 2, #4) has objected to claims 1 and 19 for lack of clarity as well as to claims 1 and 8 for reciting "first promoter." Claims 1 and 19 have been amended to clarify that the method of the claims involves reducing pathogenicity to a plant of a fungus that produces fumonisin. Claims 1 and 8 have been amended to remove the phrase "first promoter." Accordingly, the objections to the claims should be withdrawn.

#### **The Rejection of Claims Under 35 U.S.C. §112, Second Paragraph, Should Be Withdrawn**

The Office Action (7/29/03, page 2, #6) has rejected claims 1-33 under 35 U.S.C. §112, second paragraph, as being indefinite. Claims 5 and 7 were deemed indefinite because of lack of antecedent basis, which has been corrected. Claims 1, 10, and 18-20 were deemed indefinite in their recitation of a "third" nucleotide sequence. Applicants note that the adjective "third" was added to the claims only for purposes of clarity and providing antecedent basis for dependent claims, not to indicate the number of nucleotide sequences that were integrated into the genome of the plant cell. However, independent claims 1, 10, 18, 19, and 20 have been amended to remove the term "third," and dependent claims 3, 21, 22, 24, 27, 28, 29, 30, 31, 32 have been amended to recite that the nucleotide sequence is the nucleotide sequence of step (c).

In light of these amendments and the above remarks, Applicants respectfully submit that the rejections of claims under 35 U.S.C. §112, second paragraph, should be withdrawn.

### CONCLUSION

In view of the above amendments and remarks, Applicants submit that the rejections of the claims under 35 U.S.C. §§112, second paragraph, are overcome. Applicants respectfully submit that this application is now in condition for allowance. Early notice to this effect is solicited.

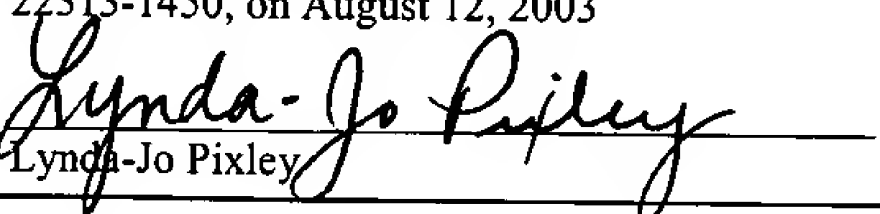
If in the opinion of the Examiner, a telephone conference would expedite the prosecution of the subject Application, the Examiner is invited to call the undersigned.

It is not believed that extensions of time or fees for net addition of claims are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required therefore (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 16-0605.

Respectfully submitted,



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